



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB0548**

Introduced 2/17/2005, by Sen. Iris Y. Martinez

**SYNOPSIS AS INTRODUCED:**

815 ILCS 710/6

from Ch. 121 1/2, par. 756

Amends the Motor Vehicle Franchise Act. Provides that in the case of entire engine assemblies and entire transmission assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee in the amount of 75% (instead of 30%) of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee. Requires a franchiser that enters into an agreement with its franchisees seeking to recover its costs from franchisees that are receiving their "prevailing retail price charge by that dealer" to meet certain requirements. Requires a franchiser that contracts with its Illinois dealers to meet certain requirements. Adds provisions concerning how a franchiser recovers costs from franchisees when there is an express written contract for a uniform warranty reimbursement policy. Makes other changes.

LRB094 09421 RXD 39668 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Motor Vehicle Franchise Act is amended by  
5 changing Section 6 as follows:

6 (815 ILCS 710/6) (from Ch. 121 1/2, par. 756)

7 Sec. 6. Warranty agreements; claims; approval; payment;  
8 written disapproval.

9 (a) Every manufacturer, distributor, wholesaler,  
10 distributor branch or division, factory branch or division, or  
11 wholesale branch or division shall properly fulfill any  
12 warranty agreement and adequately and fairly compensate each of  
13 its motor vehicle dealers for labor and parts.

14 (b) In no event shall such compensation fail to include  
15 reasonable compensation for diagnostic work, as well as repair  
16 service, labor, and parts. Time allowances for the diagnosis  
17 and performance of warranty work and service shall be  
18 reasonable and adequate for the work to be performed. In the  
19 determination of what constitutes reasonable compensation  
20 under this Section, the principal factor to be given  
21 consideration shall be the prevailing wage rates being paid by  
22 the dealer in the relevant market area in which the motor  
23 vehicle dealer is doing business, and in no event shall such  
24 compensation of a motor vehicle dealer for warranty service be  
25 less than the rates charged by such dealer for like service to  
26 retail customers for nonwarranty service and repairs. The  
27 franchiser shall reimburse the franchisee for any parts  
28 provided in satisfaction of a warranty at the prevailing retail  
29 price charged by that dealer for the same parts when not  
30 provided in satisfaction of a warranty; provided that such  
31 motor vehicle franchisee's prevailing retail price is not  
32 unreasonable when compared with that of the holders of motor

1 vehicle franchises from the same motor vehicle franchiser for  
2 identical merchandise in the geographic area in which the motor  
3 vehicle franchisee is engaged in business. All claims, either  
4 original or resubmitted, made by motor vehicle dealers  
5 hereunder and under Section 5 for such labor and parts shall be  
6 either approved or disapproved within 30 days following their  
7 submission. All approved claims shall be paid within 30 days  
8 following their approval. The motor vehicle dealer who submits  
9 a claim which is disapproved shall be notified in writing of  
10 the disapproval within the same period, and each such notice  
11 shall state the specific grounds upon which the disapproval is  
12 based. The motor vehicle dealer shall be permitted to correct  
13 and resubmit such disapproved claims within 30 days of receipt  
14 of disapproval. Any claims not specifically disapproved in  
15 writing within 30 days from their submission shall be deemed  
16 approved and payment shall follow within 30 days. The  
17 manufacturer or franchiser shall have the right to require  
18 reasonable documentation for claims and to audit such claims  
19 within a one year period from the date the claim was paid or  
20 credit issued by the manufacturer or franchiser, and to charge  
21 back any false or unsubstantiated claims. The audit and charge  
22 back provisions of this Section also apply to all other  
23 incentive and reimbursement programs for a period of 6 ~~18~~  
24 months after the date of the transactions that are subject to  
25 audit by the franchiser. However, the manufacturer retains the  
26 right to charge back any fraudulent claim if the manufacturer  
27 establishes in a court of competent jurisdiction in this State  
28 that the claim is fraudulent.

29 (c) The motor vehicle franchiser shall not, by agreement,  
30 by restrictions upon reimbursement, or otherwise, restrict the  
31 nature and extent of services to be rendered or parts to be  
32 provided so that such restriction prevents the motor vehicle  
33 franchisee from satisfying the warranty by rendering services  
34 in a good and workmanlike manner and providing parts which are  
35 required in accordance with generally accepted standards. Any  
36 such restriction shall constitute a prohibited practice.

1 (d) For the purposes of this Section, the "prevailing  
2 retail price charged by that dealer for the same parts" means  
3 the price paid by the motor vehicle franchisee for parts,  
4 including all shipping and other charges, multiplied by the sum  
5 of 1.0 and the franchisee's average percentage markup over the  
6 price paid by the motor vehicle franchisee for parts purchased  
7 by the motor vehicle franchisee from the motor vehicle  
8 franchiser and sold at retail. The motor vehicle franchisee may  
9 establish average percentage markup under this Section by  
10 submitting to the motor vehicle franchiser 100 sequential  
11 customer paid service repair orders or 90 days of customer paid  
12 service repair orders, whichever is less, covering repairs made  
13 no more than 180 days before the submission, and declaring what  
14 the average percentage markup is. The average percentage markup  
15 so declared shall go into effect 30 days following the  
16 declaration, subject to audit of the submitted repair orders by  
17 the motor vehicle franchiser and adjustment of the average  
18 percentage markup based on that audit. Any audit must be  
19 conducted within 30 days following the declaration. Only retail  
20 sales not involving warranty repairs, parts covered by  
21 subsection (e) of this Section, or parts supplied for routine  
22 vehicle maintenance, shall be considered in calculating  
23 average percentage markup. No motor vehicle franchiser shall  
24 require a motor vehicle franchisee to establish average  
25 percentage markup by a methodology, or by requiring  
26 information, that is unduly burdensome or time consuming to  
27 provide, including, but not limited to, part by part or  
28 transaction by transaction calculations. A motor vehicle  
29 franchisee shall not request a change in the average percentage  
30 markup more than twice in one calendar year.

31 (e) If a motor vehicle franchiser supplies a part or parts  
32 for use in a repair rendered under a warranty other than by  
33 sale of that part or parts to the motor vehicle franchisee, the  
34 motor vehicle franchisee shall be entitled to compensation  
35 equivalent to the motor vehicle franchisee's average  
36 percentage markup on the part or parts, as if the part or parts

1 had been sold to the motor vehicle franchisee by the motor  
2 vehicle franchiser. The requirements of this subsection (e)  
3 shall not apply to entire engine assemblies and entire  
4 transmission assemblies. In the case of those assemblies, the  
5 motor vehicle franchiser shall reimburse the motor vehicle  
6 franchisee in the amount of 75% ~~30%~~ of what the motor vehicle  
7 franchisee would have paid the motor vehicle franchiser for the  
8 assembly if the assembly had not been supplied by the  
9 franchiser other than by the sale of that assembly to the motor  
10 vehicle franchisee.

11 (f) The obligations imposed on motor vehicle franchisers by  
12 this Section shall apply to any parent, subsidiary, affiliate,  
13 or agent of the motor vehicle franchiser, any person under  
14 common ownership or control, any employee of the motor vehicle  
15 franchiser, and any person holding 1% or more of the shares of  
16 any class of securities or other ownership interest in the  
17 motor vehicle franchiser, if a warranty or service or repair  
18 plan is issued by that person instead of or in addition to one  
19 issued by the motor vehicle franchiser.

20 (g) (1) Any motor vehicle franchiser and at least a  
21 majority of its Illinois franchisees of the same line make may  
22 agree in an express written contract citing this Section upon a  
23 uniform warranty reimbursement policy used by contracting  
24 franchisees to perform warranty repairs. The policy shall only  
25 involve either reimbursement for parts used in warranty repairs  
26 or the use of a Uniform Time Standards Manual, or both.  
27 Reimbursement for parts under the agreement shall be used  
28 instead of the franchisees' "prevailing retail price charged by  
29 that dealer for the same parts" as defined in this Section to  
30 calculate compensation due from the franchiser for parts used  
31 in warranty repairs. This Section does not authorize a  
32 franchiser and its Illinois franchisees to establish a uniform  
33 hourly labor reimbursement.

34 Each franchiser shall only have one such agreement with  
35 each line make. Any such agreement shall:

36 (A) Establish a uniform parts reimbursement rate. The

1 uniform parts reimbursement rate shall be greater than the  
2 franchiser's nationally established parts reimbursement  
3 rate in effect at the time the first such agreement becomes  
4 effective; however, any subsequent agreement shall result  
5 in a uniform reimbursement rate that is greater or equal to  
6 the rate set forth in the immediately prior agreement.

7 (B) Apply to all warranty repair orders written during  
8 the period that the agreement is effective.

9 (C) Be available, during the period it is effective, to  
10 any motor vehicle franchisee of the same line make at any  
11 time and on the same terms.

12 (D) Be for a term not to exceed 3 years so long as any  
13 party to the agreement may terminate the agreement upon the  
14 annual anniversary of the agreement and with 30 days' prior  
15 written notice; however, the agreement shall remain in  
16 effect for the term of the agreement regardless of the  
17 number of dealers of the same line make that may terminate  
18 the agreement.

19 (2) A franchiser that enters into an agreement with its  
20 franchisees pursuant to paragraph (1) of this subsection (g)  
21 may seek to recover its costs from only those franchisees that  
22 are receiving their "prevailing retail price charged by that  
23 dealer" under subsections (a) through (f) of this Section,  
24 subject to the following requirements:

25 (A) "costs" means the difference between the uniform  
26 reimbursement rate set forth in an agreement entered into  
27 pursuant to paragraph (1) of this subsection (g) and the  
28 "prevailing retail price charged by that dealer" received  
29 by those franchisees of the same line make;

30 (B) the costs shall be recovered only by increasing the  
31 invoice price 180 days after initial introduction and first  
32 reported retail sale of the new motor vehicle model  
33 reported by the franchisee in the State on new vehicles  
34 received by those franchisees, hereinafter known as the  
35 "surcharge"; and

36 (C) surcharges ~~price increases~~ imposed for the purpose

1 of recovering costs imposed by this Section may vary from  
2 time to time and from model to model, but shall apply  
3 uniformly to all franchisees of the same line make in the  
4 State of Illinois that have requested reimbursement for  
5 warranty repairs at their "prevailing retail price charged  
6 by that dealer", except that a franchiser may make an  
7 exception for vehicles that are titled in the name of a  
8 consumer in another state.

9 (D) When computing the surcharge, a franchiser may not  
10 include the following costs:

11 (i) legal fees or administrative fees;

12 (ii) profits of the franchiser;

13 (iii) all costs or expenses incurred in connection  
14 with warranty service performed on certified pre-owned  
15 motor vehicles;

16 (iv) all costs or expenses associated with or in  
17 connection with manufacturer's extended service  
18 contracts; or

19 (v) anticipated or projected costs on future new  
20 motor vehicle sales.

21 (E) The aggregate surcharge, and each individual  
22 franchisee's share of the surcharge, shall be calculated at  
23 least quarterly and additionally upon any change in the  
24 number of franchisees receiving the "prevailing retail  
25 price charged by that dealer" under subsections (a) through  
26 (f) of this Section.

27 (F) The surcharge assessed to an individual franchisee  
28 shall be credited to its warranty expense record so as to  
29 properly reflect the reduction of the franchisee's  
30 warranty parts expense.

31 (G) Each month, a report shall be provided to each  
32 franchisee by the franchiser itemizing every surcharge of  
33 the franchiser attributable to new and certified pre-owned  
34 motor vehicles sold in the State during the preceding  
35 month. The report shall set forth the vehicle line and  
36 model of each motor vehicle sold, the name of the franchisee

1 that made the sale, the address of the franchisee and the  
2 aggregate amount of surcharge collected from each  
3 franchisee.

4 (H) In any case where a franchisee enters into an  
5 express written contract pursuant to paragraph (1) of this  
6 subsection (g), the franchiser shall immediately remove  
7 such franchisee's additional retail warranty mark-up costs  
8 to the manufacturer from any and all computations,  
9 calculations, or formulas that were used to calculate  
10 surcharges for the remaining franchisees being surcharged.  
11 The franchiser may not continue to recover any prior  
12 amounts attributed to such franchisee that entered into an  
13 agreement with its franchiser pursuant to paragraph (1) of  
14 this subsection (g).

15 (I) Any fees collected by the franchiser from  
16 franchisees when performing labor and parts services  
17 pursuant to a manufacturer administered certified  
18 pre-owned vehicle program or extended service contract  
19 program shall be credited against surcharges imposed upon  
20 the franchisee. The amount of such credit must be expressly  
21 set forth for each manufacturer administered certified  
22 pre-owned vehicle program or extended service contract  
23 program.

24 (3) If a franchiser contracts with its Illinois dealers  
25 pursuant to paragraph (1) of this subsection (g), the  
26 franchiser shall meet the following requirements:

27 (A) The ~~the~~ franchiser shall certify under oath to the  
28 Motor Vehicle Review Board that a majority of the  
29 franchisees of that line make did agree to such an  
30 agreement and file a sample copy of the agreement.

31 (B) On a quarterly ~~On an annual~~ basis, each franchiser  
32 shall certify under oath to the Motor Vehicle Review Board  
33 that the reimbursement costs it recovers under paragraph  
34 (2) of this subsection (g) do not exceed the amounts  
35 authorized by paragraph (2) of this subsection (g). The  
36 certification shall be filed no later than 30 days

1 following the close of the quarter for which the costs were  
2 recovered. For each franchiser certification filed with  
3 the Motor Vehicle Review Board, a copy of the certification  
4 shall additionally be sent, by United States mail, to each  
5 of its State franchisees within 3 business days. The  
6 certification shall be in the form of an affidavit and be  
7 accompanied by the following supporting documentation:

8 (i) all dates, numerical or otherwise, used in the  
9 calculation of costs provided under subparagraph (A)  
10 of paragraph (2) of this subsection (g);

11 (ii) all data, numerical or otherwise, used in the  
12 calculation of "nationally established parts  
13 reimbursement rate" provided under subparagraph (A) of  
14 paragraph (1) of this subsection (g) ;

15 (iii) a report, using the applicable data, showing  
16 the calculation of costs recoverable by the franchiser  
17 authorized by paragraph (2) of this subsection (g));

18 (iv) a report, using the applicable data, showing  
19 the calculation of the "nationally established parts  
20 reimbursement rate" provided under subparagraph (A) of  
21 paragraph (1) of this subsection (g);

22 (v) a report of those franchisees, including the  
23 principal or principals and address, which are  
24 receiving the "prevailing retail price charged by the  
25 dealer" under subsection (a) through (f) of this  
26 Section. The report shall additionally show every  
27 surcharge recovered by the franchiser attributable to  
28 new motor vehicles sold in this State during the  
29 preceding month. The report shall indicate the motor  
30 vehicle line and model of each such motor vehicle sold,  
31 the franchisee that made the sale, the address of the  
32 franchisee and the amount of surcharge collected. The  
33 report shall provide the aggregate amounts of  
34 surcharge collected. The report shall provide the  
35 aggregate amounts recovered by the franchiser for each  
36 line make; and

1           (vi) every amount, by line and model, attributed to  
2           warranty cost as a component of the franchiser's stated  
3           invoice price.

4           (C) The franchiser shall maintain for a period of 3  
5 years a file that contains the information upon which its  
6 certification is based.

7           (D) No less than annually, the franchiser shall obtain  
8           an independent audit of each warranty transaction used to  
9           calculate costs under paragraph (2) of this subsection (g).  
10          The audit shall be performed by a licensed auditing firm.  
11          An auditing firm may not perform more than 2 audits  
12          required under this Section every 3 years. The franchiser's  
13          audit shall be filed with the Motor Vehicle Review Board  
14          and a copy of the audit shall additionally be sent, by  
15          United States mail, to each of its franchisees within 3  
16          business days.

17          (4) If a franchiser and its franchisees do not enter into  
18 an agreement pursuant to paragraph (1) of this subsection (g),  
19 and for any matter that is not the subject of an agreement,  
20 this subsection (g) shall have no effect whatsoever.

21          (5) For purposes of this subsection (g), a Uniform Time  
22 Standard Manual is a document created by a franchiser that  
23 establishes the time allowances for the diagnosis and  
24 performance of warranty work and service. The allowances shall  
25 be reasonable and adequate for the work and service to be  
26 performed. Each franchiser shall have a reasonable and fair  
27 process that allows a franchisee to request a modification or  
28 adjustment of a standard or standards included in such a  
29 manual.

30          (Source: P.A. 91-485, eff. 1-1-00; 92-498, eff. 12-12-01;  
31          92-651, eff. 7-11-02.)